IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 668 of 2007(D)

OS.137/2003 of MUNSIFF COURT, KARUNAGAPPALLY

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PETITIONER:

KUTTAPPAN MADHU, MAVOLIL VEEDU,
PAVUMBA THEKKUM MURI, PAVUMBA VILLAGE.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS:

1. SREE NARAYANA CULTRURAL FOUNDATION,
   PAVUMBA, SREE NARAYANA CULTURAL FOUNDATION
   MANAGING TRUSTEE REP. BY P.K.VISWAMBARAN,
   AGED 58, MANIKANDA BUILDING PAVUMBA
   THEKKUM MURI, PAVUMBA VILLAGE.

2. P.K. VISWAMBARAN (MANAGING TRUSTEE OF
   SREE NARAYANA CULTURAL FOUNDATION,
   MANIKANDA BUILDINGS), PAVUMBA THEKKUM MURI.

BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 668/07

PETITIONER'S EXHIBITS:

EXT. P1	**TRUE COPY OF THE PLAINT IN OS 137/03 BEFORE THE MUNSIFF'S COURT, KARUNAGAPPALLY**
EXT. P2	**TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY DEFENDANTS 1 TO 3 IN DO. DO.**
EXT. P3	**TRUE COPY OF IA 1345/05 IN DO. DO.**
RCY. P4	**TRUE COPY OF THE ABOVE APPLICATION**
EXT. P5	**TRUE COPY OF THE ORDER IN IA 1093/06 DT. 23.8.06**
EXT. P6	**TRUE COPY OF THE JUDGMENT IN WPC 24182/06 DT. 18.10.06**
EXT. P7	**TRUE COPY OF IA 1963/06**
EXT. P8	**TRUE COPY OF THE OBJECTION TO IA 1963/06**
EXT. P9	**TRUE COPY OF THE ORDER DT. 12.12.06 ON IA 1963/06 IN DO. DO.**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 668 of 2007 D

JUDGMENT

The petitioner is the second defendant in O.S. No.137/03 on the file of the Munsiff's Court, Karunagappally. The grievance of the petitioner is that, vide Exhibit P9 order, the court below has delegated to the Commissioner the entire work of determining as to what all matters are to be reported by him without giving any appropriate directions as envisaged in Exhibit P6 judgment of this Court. The prayer, therefore, is to quash Exhibit P9 order.

2. As per Exhibit P9 order dated 12.12.2006, on Exhibit P7 commission application, the court below has appointed Advocate Suraj Kumar as the Commissioner. He was directed to be given a copy of Exhibit P6 judgment of this Court for perusal and was directed to strictly comply with the directions

given by this Court in the said judgment. He was also directed to consider the work memo, if filed by the parties to the suit. It was further clarified that the Commissioner need ascertain and report only matters, which are inevitable for the just disposal of the suit and that under the guise of consideration of work memo, the Commissioner need not make a rowing enquiry for any party. The petitioner had not submitted any application in the court below to ascertain any matter specifically and consequently, therefore, what remained to be considered is only Exhibit P7 commission application. The court below has not considered as to whether all the matters asked for to be ascertained in Exhibit P7 application are necessary to be ascertained, in view of the directions in Exhibit P6 judgment.

3. After advancing elaborate arguments in respect of the directions given by this Court in Exhibit P6 judgment and the necessity or otherwise

of allowing all the matters asked for to be ascertained in Exhibit P7, both sides agreed that the matters asked for to be ascertained as items 1, 3 and 4 in Exhibit P7 application alone need be considered by the Commissioner. The Commissioner need ascertain other matters, if any, which are asked for by the parties to be ascertained, only if, those are matters connected with the matters to be ascertained under items 1, 3 and 4 and not extraneous matters, which are not necessary for the purpose of the suit. The Commissioner shall, as far as possible, complete the inspection before the mid summer recess, by making inspection in the school on holidays only, so as not to cause any obstruction to the functioning of the classes in the school. The properties, if any, other than the property in which the school is functioning, can, however, be inspected even on other days as well other than holidays, if it will not cause any inconvenience to the functioning of any other

office. The Commissioner shall submit the report as expeditiously as possible.

With the above modification in Exhibit P9 order, this writ petition is disposed of.

1st March, 2007 (K.P.Balachandran, Judge)

tkv